

their liability premiums. Today, most Texas doctors are paying lower liability premiums than they were almost 10 years ago.

All major physician liability carriers in Texas have cut their rates since the passage of the reforms and most of them by double digits.

Texas's reforms prove lawsuit reform can improve access to care, expand the number of doctors and types of care hospitals are able to offer, and help reduce medical costs. According to a conservative estimate by the Congressional Budget Office, CBO, if Congress adopted only a few of the proposed lawsuit reforms, the deficit would decrease by \$54 billion over 10 years.

Madam President, \$54 billion is how much it would save the government. To put this in perspective, this is twice as much as the Finance Committee plans to raise by taxing medical devices.

During the Finance Committee markup, CBO's Director, Dr. Elmen-dorf, added that he felt the savings to the private sector would be approximately equal to the \$54 billion saved by the government.

Madam President, \$54 billion to decrease the deficit, and the savings in the private sector is another \$54 billion. Under this conservative estimation, which is substantially less than what third-party estimates have shown, enacting medical liability reform would save at least \$100 billion between the government and the private sector over 10 years.

So why would the Democrats leave medical liability reform out? Well, they did put a Sense of the Senate in the Finance Committee bill. What are the savings from the Sense of the Senate to the private sector and the government? A big, fat zero.

I will tell you why the Democrats left out medical liability reform. It is because it would hurt a Democrat special interest group: they are known as trial lawyers.

Howard Dean, the former chairman of the Democratic National Committee, put it simply:

[T]he reason why tort reform is not in the bill is because the people who wrote it did not want to take on the trial lawyers in addition to everybody else they were taking on, and that is the plain and simple truth. Now, that's the truth.

I hope as the debate unfolds on the floor that many of my colleagues on the other side of the aisle will change their mind about enacting serious medical liability reform. My medical care access protection amendment is not a battle of right versus left. It is a battle of right versus wrong.

This amendment is the right prescription for patients. We need to secure patient access to quality health care services when they need it the most. I urge my colleagues to adopt this commonsense amendment when it is brought to the floor.

One last comment. We are going to be adding what is called the doctor fix. We are going to be adding the doctor

fix unpaid for. It is \$250 billion over the next 10 years. I have been talking a lot about the Federal debt and what we are doing to our children. The other side wants to do what we all want to do around here; that is, make sure doctors' fees in Medicare are not cut because they are already paid at a very low rate, but they are doing that without honoring what they talked about known as "pay-go".

We heard a lot about that during the campaign: We need to pay for everything. We cannot keep adding to the deficit. They accused this side of the aisle as being fiscally irresponsible. Now they are going to add \$250 billion, take it off the table, and say: Well, it does not count. We are just going to add to the deficit \$250 billion; that we can fix the doctors' payments, but we are not going to pay for it.

I think this is pretty outrageous. That is why we are going to have amendments to attempt to fix what is happening to the doctors but to do it in a fiscally responsible way so we are not adding to our children's and our grandchildren's tax burden in the future.

Madam President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCAIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ORDER OF BUSINESS

Mr. McCAIN. Madam President, parliamentary inquiry: What is the pending business before the Senate?

The PRESIDING OFFICER. There is just under 3 minutes remaining in morning business.

Mr. McCAIN. And then?

The PRESIDING OFFICER. Then the Senate will turn to the conference report on homeland security.

Mr. McCAIN. Madam President, thank you.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### CONCLUSION OF MORNING BUSINESS

Mr. BYRD. Madam President, I ask unanimous consent that the remaining time in morning business be yielded back.

The PRESIDING OFFICER. Without objection, it is so ordered.

Morning business is closed.

#### DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2010—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of the conference report to accompany H.R. 2892, which the clerk will state.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2892), making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2010, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

(The conference report is printed in the House proceedings of the RECORD of October 13, 2009.)

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I thank the Chair.

Madam President, I speak today in support of the conference report providing appropriations for the Department of Homeland Security for fiscal year 2010. I especially wish to thank my ranking member, Senator GEORGE VOINOVICH, for his cooperation in producing the agreement that is now before the Senate. It has been 8 years—8 long years—since the attacks of 9/11. There are some people in this country who have become complacent about the threat of another attack. Don't count me as one of them. I am not one of those people.

There have been numerous terrorist attacks around the globe, including the London, Madrid, and Mumbai bombings. Just last month, a Denver man was indicted on a charge of conspiracy to use weapons of mass destruction. Where? In New York City. So we must continue to be vigilant. Nor can we be complacent about Mother Nature's power to wreak havoc with a major earthquake, flood, or hurricane, meaning that such disaster relief will require the funding provided in this bill.

This year, I have set five goals for the Homeland Security Department, five goals that I trust we all share. What are they? No. 1, to secure our borders and enforce our immigration laws. No. 2, to protect the American people—your people, my people, the American people—from terrorist threats. No. 3, to prepare for and respond to all disasters, both manmade and natural. No. 4, to support our State, local, tribal, and private sector partners with resources and information. No. 5, to give the Department of Homeland Security the management tools it needs to succeed.

I believe the conference report we are presenting today meets those goals.

Funding for the Department of Homeland Security totals \$42.8 billion. Do you know how much money that is? That is \$42.80 for every minute since Jesus Christ was born. That is a lot of money. It is an increase of \$2.65 billion

over 2009. Again, I thank my friend, the very able Senator GEORGE VOINOVICH, the ranking member, for his notable contributions to this legislation. I thank Senator DANIEL INOUE and Senator THAD COCHRAN, the chairman and the vice chairman of the Appropriations Committee.

I also thank our able majority and minority staff who have worked together to produce this legislation. Let me name them: Charles Kieffer, Chip Walgren, Scott Nance, Drenan Dudley, Christa Thompson, Rebecca Davies, Carol Cribbs, and Alex Avanni.

Madam President, I thank all Senators, and I urge support for the conference report.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Madam President, I am pleased to join the distinguished Senator from West Virginia in presenting the fiscal year 2010 appropriations conference report for the Department of Homeland Security.

As my colleagues know, it is after October 1—the start of a new fiscal year—and the Department of Homeland Security's programs and activities are being funded under a continuing resolution because we did not complete our work on time. I think this is unfortunate. The House adopted its version of the bill on June 24 and the Senate adopted it on July 9.

When I was mayor and Governor of Ohio, I would have lost my job if the budget were not done in time or the appropriations not done on time. I think everyone would agree that this is not the way to properly run our operation. I know of no good explanation as to why we could not have resolved our differences to allow this conference agreement to be signed into law before this date.

Senator BYRD said the conference report recommends a total of \$44.1 billion in appropriations to support programs and activities of the Department of Homeland Security. Of this amount, \$42.8 billion is for discretionary spending, and this is roughly \$254 million less than the President's total discretionary request. I wish to make that clear, that it is less than the President requested.

In addition, \$1.4 billion is provided for the Coast Guard retired pay—the only mandatory appropriations account in the conference report—and \$241.5 million is provided for Coast Guard overseas contingency operations.

The conference report includes significant resources for border security and enforcement of our immigration laws, for continued improvements in security at our Nation's airports and modes of surface transportation, for the Coast Guard operations and recapitalization, for helping our citizens prepare for and recover from natural disasters, and for equipping and training our Nation's first responders. I think Senator BYRD did a beautiful job in terms of his five reasons and the things

we ought to be doing, and that is what we have tried to do in this report, to respond to those five goals Senator BYRD outlined.

As Senator BYRD has indicated, there is much in this conference report to recommend. I am not going to list all of the funding recommendations, but I do wish to note some. This is very important: Full funding is provided for border security. This includes funds to support 20,163 Border Patrol agents, 21,124 Customs and border protection officers, and 33,400 detention beds. These are the beds we use when we pick up people and we put them there and hold them until we return them to where they came from. Also included is \$800 million to continue work on the virtual border fence and to improve radio communications.

Starting in fiscal year 2005, significant increases have been provided for border and immigration enforcement. Fewer people are illegally crossing our borders. This can be seen in the decrease in apprehensions of aliens along our borders from nearly 1.2 million in fiscal year 2005 to nearly 724,000 in fiscal year 2008. More fencing, roads, and personnel have allowed the Border Patrol to increase the number of miles over which it has effective control from 253 miles in October of 2005 to 729 miles in March of 2009.

Additional agents and detention beds have allowed U.S. Immigration and Customs Enforcement to increase total removals of aliens from nearly 247,000 removals in fiscal year 2005 to approximately 347,000 in fiscal year 2008. We are making significant progress in terms of our border protection and going after these illegal aliens.

This fiscal year 2010 conference report provides nearly \$16 billion in appropriations for these activities. This will allow us to continue making progress, but we still have a long way to go and at a great expense. One of these days I am going to come to the Senate floor and talk about how much money we have spent and how much money we are going to have to continue to spend if we are going to do anything about the problems of illegal aliens in this country.

While this conference report is significant for what it includes, it excludes two important provisions added to this bill when it was considered by this Senate, including a permanent extension of the E-Verify program and the extension of E-Verify to current employees. I would have preferred to have the conference agreement to include both provisions, but my House colleagues were not so inclined. Even though this conference agreement does not permanently authorize E-Verify programs as opposed to the Senate bill, it does extend the program's authorization for an additional 3 years, allowing its continued development as a crucial tool for employers to ensure a legal workforce. However, it does not include the Senate provision offered by my colleague from Iowa, Senator GRASSLEY,

which would have given employers the flexibility to voluntarily check their entire workforce and not solely new hires.

The administration expressed concerns that the provision could tax the capacity of E-Verify. Let me tell my colleagues, E-Verify has the capacity to handle more than 60 million queries a year and it has received less than 8.7 in fiscal year 2009. Capacity does not seem to be a barrier of this program, and this is an issue I hope we are going to revisit one of these days.

I wish to thank the chairman of the Senate subcommittee, my colleague from West Virginia, Senator BYRD. It has been an honor for me to work with Senator BYRD this year. This is my first year on Appropriations, and who do I have as my chairman but the distinguished Senator from West Virginia.

Mr. BYRD. I thank the Senator.

Mr. VOINOVICH. Madam President, I wish to thank Mr. PRICE, the ranking member of the House committee, and Mr. ROGERS for their substantial contributions to this bill. It has taken many hours of hard work by these Members and their staffs to reach the agreements which are presented to the Senate today. While everything is not settled to my liking, I believe this is a balanced set of recommendations which reflects many of the Department's priorities and achieves a reasonable degree of compromise in some of the more contentious issues.

I again wish to join Senator BYRD in commending our staff. Mr. Kieffer has been wonderful to work with. The folks on my side, Carol and Rebecca. I am a new member of the Appropriations Committee. I have never seen staff work as conscientiously as we have had for the Appropriations Committee. Senator BYRD, it is almost like magic they do such a good job for us. So again, I wish to thank them for their good work.

Madam President, I recommend this conference report to my colleagues for their consideration, and I support it.

I yield the floor.

Mr. BYRD. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. TESTER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TESTER. Madam President, I congratulate Chairman BYRD and Senator VOINOVICH in getting this conference report to the Senate today. This is a very good example of good work that comes from folks who work together to get things done.

With good funding levels for our firefighter support programs and funding for two emergency operations centers critical to my State, this is a bill that does right by the folks to keep America safe every day.

There is one issue, however, that still gives me great concern; that is, the funding in this bill for the proposed National Bio and Agro-Defense Facility. The final conference report includes my amendment requiring DHS to conduct a security and risk mitigation study before getting any money for construction of the bio facility. It also includes an additional requirement that the National Academy of Sciences puts its independent eyes on the Department's study before funds go out the door.

This is a good start, but it is not enough. I do not understand why we are going to appropriate \$30 million for a project we need not one but two studies about whether this project can move forward safely.

Independent experts have real concerns about building the NBAF in the heart of the beef belt where an accidental or intentional release of foot-and-mouth disease could have disastrous consequences for America's livestock industry, and that industry includes Montana where the livestock industry is a \$1.5 billion industry.

This facility will house some of the most dangerous agricultural diseases around the world. We should not start doing this research on the U.S. mainland and in the middle of tornado alley without taking every possible precaution.

On a matter this serious, we ought to measure twice and cut once. Regrettably, by giving the Department \$30 million this year, we are not heeding that old saying.

The GAO, the subcommittee, and independent experts acknowledge that we do not know if this research can be done safely on the U.S. mainland. We all agree that an accidental release of foot-and-mouth disease or another dangerous disease from this facility would devastate America's livestock industry. Yet we are providing the money to go ahead with it anyway.

Why not just wait and do the studies this year and then the Department can come back to us with their revised funding request next year?

I understand this has to do with getting Kansas to sign a cost-sharing agreement. But are we convinced Kansas will not put forward the money next year if this facility is to be built there?

If this facility is built in Kansas, the United States will become the only country, other than England and Canada, to do FMD research on a mainland. Everyone else does it on an island.

England had an accidental release in 2007 which led to eight separate outbreaks of FMD on farms surrounding their facility. Canada at least does it in an urban area far from livestock production areas.

Congress's nonpartisan, independent auditor, the Government Accountability Office, has sounded the alarm on this issue. They are telling us that Homeland Security has not conducted

or commissioned any study to determine whether foot-and-mouth disease work can be done safely on the mainland.

Proponents of this facility have said it is OK to do this research because the new Kansas facility will have the most modern technology and all the safety bells and whistles that Plum Island lacks. But the GAO rightfully argues this view only encourages a false sense of security.

The GAO says:

Even with a proper biosafety program, human error can never be completely eliminated. Many experts told us that the human component accounts for the majority of accidents in high-contaminant laboratories. This risk persists, even in the most modern facilities and with the latest technology.

I know I am not the only Senator who shares the GAO's concern. So I look forward to working with many of my colleagues on this issue again next year. We do need to pay attention to what these studies say, and as a member of this subcommittee, I will be watching it very closely.

The Department is going to come here next spring with a \$500 million request for funding for this project. That is a lot of money. But the true cost of doing this research in the middle of tornado alley could be much higher. The cost of cleaning up after an FMD release—the culling of entire herds of livestock, the loss of foreign agricultural sales that will endure for years after a release, and the loss of America's food security—will be measured in the tens of billions of dollars. That is something America cannot afford, and we must not let it happen.

Madam President, I yield the floor and suggest the absence of a quorum. I ask that the time be equally divided between both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### RECESS

Mr. BYRD. Madam President, I ask unanimous consent that the Senate stand in recess until the hour of 2:15 p.m. today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Thereupon the Senate, at 12:26 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CARPER).

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2010—CONFERENCE REPORT—Continued

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Oklahoma is recognized.

Mr. COBURN. Mr. President, I believe we are going to be considering the Homeland Security conference report. I want to spend a few minutes talking about that so that the American public might realize what we are doing. This year's spending totals have averaged, on individual appropriations bills, anywhere from a high of 24 percent to a low of about .6 percent, on one bill that had received twice its annual appropriation in the stimulus. We have of course a conference report that is \$42.7 billion. That is a 6.5, almost 7-percent increase over last year, the same the year before, and a 23-percent increase the year before that. There is no question, homeland security is an important part.

The issue I want to raise with my colleagues and the American people is, we had inflation of 1.5 percent last year. We do have one bill, one bill that has come in at inflation or less. All the rest are averaging around 10, 11, 12 percent increases. We ought to be concerned about what the Congress is doing in terms of increasing the spending in light of the fact that we have just finished a year in which we had a published \$1.4 trillion deficit. But those are Enron numbers. That is Enron accounting because we didn't recognize all the money we borrowed from trust funds that don't go to the public debt, that are internal IOUs that our children nevertheless will still have to pay back.

The real reason I want to talk about this bill is because it purports to have an amendment on competitive bidding. I will grant that the amendment is better than no amendment, but the American people should be outraged at what we have done on competitive bidding in this bill. What we have said is we want competitive bidding—except for our friends. If you are connected to a Senator through an earmark or if you are connected through a grant process, what we have done is taken a large number of grants and directed them specifically without competitive bidding. What does that mean to the process? What does that do to the integrity of the process? It says if you are well heeled and well connected, then in fact you can have what you want on a non-competitive basis, because that is what the amendment in the bill says. But if in fact you are not, then you will have to compete on the basis of merit and price like everybody else in the country.

Once again we have earned our lack of endorsement by the American public because of what we have said: "Unless otherwise authorized by statute without regard to the reference statute." Those are fancy words for saying we want competitive bidding on everything except earmarks and the congressional directive we have in this bill.

That means if you have a business and you have an earmark, you didn't have to be the best business to get